SUPREME COURT, U.S.
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No. 94-618

IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

STATE OF IOWA, TERRY E. BRANDSTAD, and,
IOWA FRANCHISEE ASSOCIATION

Petitioners,

vs.

HOLIDAY INNS FRANCHISING INC.
HOLIDAY INNS, INC., and
McDONALD'S CORPORATION,

Respondents.

Joint Petition for Writ of Certiorari
To The United States Court of Appeals
For The Eighth Circuit

BRIEF OF McDONALD'S CORPORATION IN OPPOSITION TO CERTIORARI

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QUESTION PRESENTED

Whether the district court and court of appeals erred in determining, on undisputed facts, that the provisions of the Iowa Franchise Act challenged in the complaint unconstitutionally impair pre-existing franchise agreements when:

(a) those provisions of the Iowa Franchise Act alter fundamental express terms of the agreements (including the nature of the contract and scope of the transaction, the identity of the parties, and the duration of the agreement), which terms were essential to the bargain originally made;

(b) neither Iowa (which previously had no law regulating franchises generally) nor any other state had ever imposed similar retroactive alterations on franchise agreements; and

(c) retroactive application of the challenged provisions served only to redistribute benefits and burdens between the parties to pre-existing franchise agreements, and the public interest asserted as justifying the impairment related solely to the greater "fairness" of such a redistribution, and *there was no claim that such retroactive application provided any direct or apparent benefits to the general public*?

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BRIEF OF McDONALD'S CORPORATION IN OPPOSITION TO CERTIORARI

McDonald's Corporation[1] files this brief in opposition to the Petition for Certiorari to review the judgment of the United States Court of Appeals in this case.

The decision below is not in conflict with any decision of this Court or with the decisions of any other circuit. Rather, it reflects the decisional framework established by this Court and accords with a

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[1] McDonald's has no affiliates requiring disclosure under Rule 29.1. Parties not listed in the caption are Steven L. Nelson and Tass Corporation, which is wholly owned by Mr. Nelson.

multitude of other decisions which have considered similar issues. It presents no novel or unsettled issue requiring resolution by this Court.

STATEMENT OF THE CASE

This case was decided on summary judgment. Neither here nor below have petitioners contended that there is any dispute as to the material facts, which the record shows to be as follows.

A. Nature of the Action

McDonald's owns, develops, franchises, and operates a restaurant "system" which brings together its concepts for developing and maintaining an economically sound McDonald's restaurant marketing system, principles and operating practices developed through experience, and proprietary rights in certain trade names, service marks and trademarks, including "McDonald's" and "McDonald's Hamburgers". (Depending on context, the term "McDonald's System" refers either to the total organization composed of McDonald's and its franchisees or to the concepts and methods of operation utilized by that organization.) McDonald's selects locations to be developed as restaurants, buys or leases real property, and invests substantial amounts of its own capital (often exceeding $1 million per new restaurant) in constructing and developing those restaurants. It then selects individuals to operate specific restaurants for defined terms (generally 20 years). (Eighth Circuit Joint Appendix ["JA"] 59-62.)

Steven L. Nelson is a party to six franchise agreements for McDonald's restaurants in or near Des Moines, Iowa, including one at 4812 S.W. 9th Street, Des Moines ("the 9th Street McDonald's") and one at 3000 S.E. 14th Street, Des Moines ("the 14th Street McDonald's").[2] Mr. Nelson, with the consent of McDonald's, has

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[2] Nelson, with the consent of McDonald's, purchased the franchises from a prior franchisee, Arch Madden. Nelson personally agreed to perform all of the terms and conditions of the franchises, and agreed that "[a]ll terms and conditions of the Franchise shall remain in full force and effect." (JA 76-77, 83.) McDonald's leases the premises of the 9th Street McDonald's and is the fee owner of the premises of the 14th Street McDonald's. (JA 86-87.)

assigned all of the franchise agreements to Tass Enterprises, Inc. ("Tass"), a corporation wholly owned by him. (JA 57.) (Mr. Nelson and Tass will be referred to collectively as "Nelson.")

The 9th Street McDonald's franchised to Nelson is within a three-mile radius of a location at Fleur Drive and Wakonda View, Des Moines ("the Fleur Drive location"), where McDonald's has been planning to develop a new restaurant on premises it is acquiring. But for the purported applicability of the Act to the pre-existing agreements between McDonald's and Nelson, McDonald's would develop a restaurant at the Fleur Drive location. (JA 84-85.)

If McDonald's developed such a restaurant, it would determine, in its own business judgment, whether the proposed location would be operated through its own subsidiary or by a franchisee. In the latter case, McDonald's would offer the operation to one of several current franchisees or to a first-time franchisee, based on its judgment as to the long-term interests of the McDonald's System. (JA 85-86.)

Development of the Fleur Drive location is affected by the Iowa Franchise Act ("Act").[3] Section 6 of the Act denies McDonald's the right to open a restaurant at the Fleur Drive location unless it either offers a franchise for that location to Nelson or compensates Nelson based on the notion that some undefined volume of business to be conducted at the Fleur Drive location belongs to the 9th Street McDonald's. McDonald's asserts that the Act's requirement that it disregard its contract rights and act in this manner is invalid. (JA 86.)

The franchise agreement for the 14th Street McDonald's was issued for a twenty-year term commencing on the opening date of the restaurant, December 17, 1974. (JA 86.) *While Nelson has not been an unsatisfactory franchisee, McDonald's has a contract right to make a new term decision based on its own judgment and, pending further review of the constitutional status of the Act, does not wish to offer any new or rewritten franchises potentially subject to the Act.*

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[3] The Act will be cited here solely by its own section numbers. (Section "x" of the Act is codified as Iowa Code § 523H.x.) The Act became law on April 23, 1992. By its terms (§ 2), the Act "applies to a new *or existing* franchise" (emphasis added).

But Section 8 of the Act purports to require McDonald's to continue Nelson as franchisee beyond the contract term, absent "good cause" not to do so.

McDonald's challenges the validity of the Act's provisions which attempt to confer on Nelson protection against McDonald's market development, the right to renewal of his franchises, and various other rights denied by its agreements with Nelson. Nelson insists on his rights under the Act. (JA 86, 89.) McDonald's brought this action against Nelson for a declaration of the parties' rights in light of the Act. The State of Iowa and the Iowa Franchisee Association, the petitioners here, intervened to defend the validity of the Act. Both courts below found that the provisions challenged by McDonald's unconstitutionally impair the franchise agreements with Nelson insofar as those provisions confer upon him rights inconsistent with the express terms of the agreements. *McDonald's Corp. v. Nelson*, 822 F. Supp. 597 (S.D. Iowa 1993), *aff'd sub nom. Holiday Inns Franchising, Inc. v. Brandstad*, 29 F.3d 383 (8th Cir. 1994).

B. The McDonald's System and The Franchise Agreements[4]

McDonald's has been committed to the franchise relationship as its fundamental business method for over thirty years. McDonald's has been able to pursue its commitment to franchising because it, and its franchisees, have been able to rely on the careful balance, shared economic investments and incentives, and mutual relationships established by the fundamental concepts and provisions of the franchise contract. (JA 57-58.) Application of these concepts and provisions — which are discussed in greater detail below — has made McDonald's and its franchisees one of the most (if not the most) successful franchising organizations in the United States. The acceptability of these concepts and provisions of a McDonald's franchise is confirmed by the strong demand for franchises on the terms which McDonald's has established. (JA 58-59.)

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[4] Judging the severity of a contractual impairment requires that the terms altered be viewed in their commercial context. Because appellants completely disregard that context, which is not disputed, it must be developed at some length in this brief.

Three key franchise contract elements significantly contribute — individually and together — to the success of McDonald's and the success of its franchisees, by providing flexibility and incentives which enable the franchise network to be an effective, consumer-oriented and service-oriented competitor. These elements are:

a. The principles that a McDonald's franchise is limited to a right to conduct operations at a single and specific McDonald's restaurant location; that franchising decisions are made one-at-a-time; and that the process of new restaurant development is based on sound marketing and consumer service principles rather than on inflexible contract commitments.

b. The principle that, rather than being perpetual or subject to automatic renewal, the McDonald's franchise is limited to a specific period of time, generally twenty years.

c. The principle that McDonald's can select those with whom it will have a franchise relationship, and that franchises are granted to individual entrepreneurs (and their spouses, if desired) who live in the locality of their McDonald's restaurant and who actually own and will continue to own the entire equity interest in the business, without investors, minority "partners" and other "passive" parties. (JA 59.)

In the ongoing development of an economically-sound franchise network which will provide opportunities for the company and its franchisees, McDonald's evaluates and analyzes the overall marketplace for food service before any franchising decision is made. McDonald's identifies locations to be developed, without considering the identity of potential operators for those locations, and buys or leases those locations. (JA 60.)

McDonald's later decides how the location will be operated and, when an individual is selected to operate the restaurant, it offers a franchise contract to operate that restaurant. The franchise agreement sets an overall economic balance between McDonald's and its franchisees to provide McDonald's, its franchisees, and its future franchisees all with an opportunity to prosper — an opportunity proven by the success of both franchisees and the company and by the ability to continue to attract prospective franchisees. (JA 60.) Franchisees depend on having strong McDonald's operations, not only at the franchisees' own locations, but overall. (JA 60-61.) Part of what attracts franchisees to McDonald's is the fact that the terms of the franchise agreements provide both individual opportunity and the ability, utilizing McDonald's business judgment, to foster and protect the overall long-term interests of the McDonald's System. (JA 61.)

The allocation of rights, obligations and risks agreed to between McDonald's and its franchisees in the franchise agreements provides franchisees with incentives to maximize their operational performance. And it provides McDonald's with the flexibility needed to respond to market developments, demographic changes, consumer demand, competitive circumstances, and other factors in a rapidly-changing business environment. (JA 62.)

McDonald's gave its consent to Nelson's acquisitions of franchise rights (see note 2, *supra*) in reliance on the provisions of the franchise agreements, which were well known to all parties when Nelson and Madden negotiated the consideration paid by Nelson to acquire the McDonald's franchises. (JA 79-83.) Other franchisees have also relied on those terms and on their confidence in the judgment of McDonald's, rather than the legislature, to operate a successful franchise system. (JA 84.)

SUMMARY OF ARGUMENT

The courts below correctly held that the Contract Clause imposes more stringent limits than equal protection or substantive due process on state legislation that retroactively redistributes contractual benefits and burdens. Impairment occurs when a statute redistributes contractual benefits and burdens during the life of the contract, while requiring the disadvantaged party to continue performing the altered

contract. The impairment is severe if the terms altered were material to the original structuring and pricing of the bargain between the contracting parties. The courts below properly found a severe impairment here because the Act alters fundamental contractual terms which bore directly on the willingness of McDonald's to enter into the agreements and on the pricing and other elements of the bargain.

The courts below also correctly applied the principle that a severe impairment is prohibited unless retroactive application of the statute to pre-existing contracts is shown to have a "significant and legitimate public purpose" and to be reasonably related to that purpose. A purpose is legitimate if it pertains to protection of the interests of those not parties to the contract, *but not if it relates solely to redressing what the legislature considers an unfair distribution of benefits and burdens between the contracting parties, absent unexpected developments which produce a windfall to one of the parties.* It is undisputed that the sole purpose of the Act was to restructure supposedly unfair bargains between franchisors and franchisees, with no direct benefit to any third parties. That purpose cannot justify the resulting severe contractual impairment.

ARGUMENT

I. THE COURTS BELOW CORRECTLY FOUND THAT THE FRANCHISE AGREEMENT ACT CONFLICTS DIRECTLY WITH FUNDAMENTAL PRINCIPLES OF PRE-EXISTING MCDONALD'S FRANCHISE CONTRACTS.

A. The Act Changes the Nature of the Contract and the Scope of the Transaction.

McDonald's franchise agreements accord a right to operate one restaurant at a specific location. Nelson's franchise agreements, in accordance with McDonald's customary practices (JA 63), provide that: "*this License establishes a Restaurant at the location specified in sub-paragraph 2(a)(i) only and that no 'exclusive,' 'protected' or other territorial rights in the contiguous market area of such Restaurant is hereby granted or inferred.*" Before acquiring the franchises, Nelson was given Franchise Offering Circulars which stated that none

of the agreements "contain *any* exclusive grant, exclusive area, exclusive territorial rights, protected territory, nor any right to exclude, control or impose conditions on the location or development of future McDonald's restaurants at any time." (JA 85, 78 (emphasis added).)

The economic terms and performance provisions of the franchise agreements have been based on the absence of any territorial rights. There are no commitments to grant additional franchises. Accordingly, McDonald's franchisees' focus on building the opportunities presented by the single franchise restaurant is at the center of the ongoing McDonald's restaurant development program. They are not encouraged to focus on the prospects of developing more restaurants within some predetermined "territory," or on any guarantee that sales growth which may occur within such a "territory" will "belong" to the franchised operation which was there first. (JA 63.) The franchisee does not pay for such added rights. These limitations have provided McDonald's with the flexibility needed in a dynamic market environment to develop new restaurant locations in the most efficient way and to select the most appropriate operator for each location. (JA 63-64.)

McDonald's development of restaurants in an area takes place over an extended period. Sales patterns naturally shift. As an area evolves, additional McDonald's restaurants are needed to accommodate changes in customer patterns and respond to competition. (JA 66-67.) Such additions and realignments of sales patterns are anticipated by both McDonald's and its franchisees. McDonald's is thus contractually enabled to locate restaurants based on looking at how the *network* of McDonald's restaurants will function. The fact that decisions are made from a System-wide perspective, is a key element of McDonald's franchising, for both McDonald's and its franchisees. (JA 67.)

After McDonald's has decided to develop a new location, an *independent* decision is made whether that location should be franchised to an independent operator. If it is franchised, either a current franchisee or a prospective franchisee may be considered as the most desirable operator. Neither proximity of an existing franchisee to a new McDonald's restaurant site nor bare compliance with current franchise agreements warrants a new franchise offer. (JA 69-70.)

Due to the success of the McDonald's System, and their own success as part of it, most McDonald's franchisees want more McDonald's franchises. *McDonald's has found that the absence of any territorial rights for franchisees has served as a significant incentive for franchisees to do more than minimally comply with the franchise agreement.* (JA 70-71.)

Section 6 of the Act purports to limit McDonald's development of new restaurant locations and overrides the provisions of Nelson's franchise agreements which deny any territorial rights or protection against future restaurant development. The purported right conferred by Section 6 directly impacts whether McDonald's will develop a restaurant at the Fleur Drive location and, if it does so, its absence of obligation to Nelson regarding that location. The courts below thus concluded correctly that this provision of the Act works a fundamental change in the existing McDonald's contracts.

B. The Act Changes the Term of the Contract From a Fixed Term Without a Right to Renewal to a Perpetually Renewable Term.

The McDonald's franchise agreement limits the franchise to a specific period, generally twenty years; franchises are not renewed or extended on expiration unless the parties make a new agreement. As a result, a franchisee knows that an offer of a new franchise (a "rewrite") at the same restaurant location will not be obtained merely by avoiding material breaches of the franchise agreement. McDonald's is not compelled to continue its franchise relationship, beyond the term, with a franchisee whose performance, involvement or attitude is less desirable than that of other possible operators. The economic terms on which the franchise is offered reflect that fact. (JA 71.)

Each of Nelson's franchise agreements has a single twenty–year term. In each, the franchisee acknowledges the limited term of the franchise and that there is "no promise or representation as to the renewal of this [franchise] or the grant of a new [franchise]." Before acquiring the franchises from Madden, Nelson was given Franchise Offering Circulars which stated that "[t]he franchise does not grant the franchisee a right to renew or extend. Issuance of a new franchise after franchise expiration lies solely in the discretion of the Franchisor."

(JA 77, 78, 86-88.) *McDonald's has found that the contractual allocation of rights with respect to the franchise term has served as a significant incentive to maximize franchisee performance and dedication.* (JA 73-74, 59-60.)

Section 8 of the Act forbids a franchisor to refuse to renew a franchise unless upon six months' notice before expiration and for "good cause." "Good cause" has two elements: it must be "based upon a legitimate business reason," which "includes the failure of the franchisee to comply with any material lawful requirement of the franchise agreement," and it must not be "arbitrary or capricious when compared to the actions of the franchisor in other similar circumstances." Act §§ 8(2)(a) & 7(1). Section 8 thus contravenes the agreement that Nelson's franchise is granted only for a limited term, with no right to continue longer unless McDonald's freely chooses to grant further rights. The courts below concluded correctly that this provision of the Act works a fundamental change in the existing McDonald's contracts.

C. The Act Eliminates McDonald's Contractual Right to Select the Persons With Whom It Wishes to Have Franchise Relationships in the Exercise of Its Judgment.

McDonald's grants franchises only to those individuals who live near their McDonald's restaurants, who actually own and will continue to own the entire equity interest in the restaurants and their profits, and who will work full-time at their McDonald's restaurant business. McDonald's does not grant franchises to (or permit interests in franchises to be owned by) absentee investors or business entities that are separate from the interests of the individual franchisee(s). (JA 65-66.)

McDonald's recruits and trains individuals with motivation and entrepreneurial talent to become active, on-premises franchisees. (JA 66.) McDonald's believes that the McDonald's franchise cannot be subordinated to a position where the franchisee (or someone financially interested in a franchise) may treat the franchise as just one of many business activities or investments, diluting his or her commitment to make the McDonald's restaurant a successful part of the entire System of restaurants and franchisees and diluting the reward which the franchisee earns by his or her efforts. (JA 66.)

Nelson's franchise agreements (and the Franchise Offering Circular given to Nelson before he acquired Madden's franchises) provide that the franchisee specifically agrees to personally devote full-time efforts to the restaurants. (JA 78, 80-81.) The franchisee also warrants that he is the only person with any equity or other interest in the franchises; and that he will not make nor permit the creation of new or additional equity, partnership, capital or other interests in the franchises nor make or permit any direct or indirect subsequent assignment or transfer of any issued and outstanding equity interests, without the prior written consent of McDonald's. (JA 80-81, 89, 78.)

Sections 5(4) and 5(13) of the Act provide franchisees a variety of rights to transfer their interests in their franchises, including (1) the right to offer minority ownership interests to public shareholders or others not involved in the business without franchisor approval, (2) the right to transfer minority ownership interests to employee stock ownership plans without notice to or approval by the franchisor, and (3) the right to grant security interests in the franchise to lenders without notice to the franchisor despite contractual prohibitions. The courts below concluded correctly that these provisions of the Act work a fundamental change in the existing McDonald's contracts.

D. No Common Law Duties Obviate the Conflict Between the Act and the Contracts, Because Neither in Iowa nor Elsewhere Does the Common Law Provide Parties to Agreements Like Those Here with Rights Like Those Conferred by the Act.

Petitioners suggest that the Act does not alter contract terms because similar restrictions are already inherent in Iowa common law. (Pet. 12, 19-20.) As McDonald's showed the courts below, the overwhelming weight of authority leaves no doubt that the implied contractual duty of good faith contract performance referenced by petitioners provides no support for the contract-overriding duties created by the Act. Good faith contract performance is an obligation, implicit in all contracts, which is circumscribed by the express provisions of the contract and involves mutual duties which are predicated on the agreed purpose and consistent with the justified expectations of the parties. Restatement (Second) of Contracts § 205.

It "imposes upon each party the duty to do nothing destructive of the other party's right to enjoy the fruits of the contract and to do everything that the contract presupposes they will do to accomplish its purpose." *Conoco Inc. v. Inman Oil Co., Inc.*, 774 F.2d 895, 908 (8th Cir. 1985).

The implied duty of good faith performance is intended *only* to give effect to the intention of the parties as expressed in their contract.[5] It cannot override or contradict an express term of the contract, or require granting of benefits which the parties did not regard as part of the bargain.[6]

Express terms, which expressly negate expectations which might otherwise be inferred from the agreement, remain fully effective. Here the contractual documents (1) expressly negate "*any* right to exclude, control or impose conditions on the location or development of future McDonald's restaurants at any time"[7] (JA 85, 78 (emphasis

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[5] *Midwest Management Corp. v. Stephens*, 291 N.W.2d 896, 913 (Iowa 1980), found a facially absolute power of cancellation qualified by an implied obligation of good faith because such a limitation was necessary to establish mutuality of obligation and so preserve the enforceability of the contract. No such implied limitations are necessary to establish mutual obligations in the franchise agreement here.

[6] *See, e.g., Cambee's Furniture, Inc. v. Doughboy Recreational, Inc.*, 825 F.2d 167, 174-75 (8th Cir. 1987) (South Dakota law) (implied covenant of good faith is an aid to contract interpretation, not a separate cause of action); *Domed Stadium Hotel, Inc. v. Holiday Inns, Inc.*, 732 F.2d 480, 485 (5th Cir. 1984) (Louisiana law) (duty of good faith did not override express right of franchisor to open new hotels anywhere other than franchised site); *Centronics Corp. v. Genicom Corp.*, 132 N.H. 133, 562 A.2d 187, 193-96 (1989) (Souter, J.) (no implied duty of buyer to consent to release amount undisputedly due to seller from contractual escrow, pending resolution of other disputes).

[7] *Scheck v. Burger King Corp.*, 798 F. Supp. 692, 695-99 (S.D. Fla. 1992), construed a franchise agreement containing language similar to that in Nelson's agreement. *Id.* at 695. It held that, absent an express grant of power to the franchisor to locate restaurants wherever it chose, the franchisor's right to do so was still constrained by a duty of good faith. But the same contract had received a contrary construction in *Fickling v. Burger King Corp.*, 843 F.2d 1386, [1987-89 Transfer Binder] Bus. Franchise Guide (CCH) ¶ 9099 (4th Cir. 1988). *Scheck*'s construction appears to be incorrect. But *Scheck* is also distinguishable, because McDonald's contract rights here were explained by the Offering Circular language quoted in text and were well understood by the parties.

added); (2) expressly provide that "[t]he franchise does not grant the franchisee a right to renew or extend. Issuance of a new franchise after franchise expiration lies solely in the discretion of the Franchisor" (JA 77-78); and (3) specify that one of the basic tenets of the McDonald's System is "having a franchisee on the Restaurant premises who personally devotes full time and best efforts to the operation of the Restaurant and owns the entire equity interest in the Franchise and its profits" (JA 82). Thus, rights to territorial protection, renewal, and transfer to passive interests were unmistakably excluded from the interests protected by the duty of good faith.

There was no need for the courts below to discuss petitioners' argument on this point, as it was shown to be totally without merit. Most of the cases on good faith relied upon by appellants deal with franchises or dealerships of indefinite duration terminable on short notice, with no explicit statement of permissible grounds for termination. In such cases, courts commonly find an implied understanding that the franchisee or dealer will not be arbitrarily denied the opportunity to reap the benefits after it has made substantial commitments of time and money beneficial to the franchisor. *E.g., Seegmiller v. Western Men, Inc.*, 20 Utah 2d 352, 437 P.2d 892, 894 (1968).[8] Moreover, as *Seegmiller* itself states, the rationale of its rule depends on the *absence* of express contractual provisions, like those here, negating the existence of the expectations allegedly protected by the implied term. Finally, the right to unilaterally terminate a governing agreement when

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[8] Other cases based on this type of analysis, and a similar absence of express preservation of the franchisor's freedom, include *Arnott v. American Oil Co.*, 609 F.2d 873, 881-84 (8th Cir. 1979), *cert. denied*, 446 U.S. 918 (1980) (termination without cause following repeated threats of nonrenewal, violative of prior express assurances of independence in operation and prior custom of routine renewal which had induced dealer to accept transfer to this location); *Larese v. Creamland Dairies, Inc.*, 767 F.2d 716 (10th Cir. 1985) (duty of good faith limits power to deny approval of assignment of franchise). In the context of a one-sided short-term service station lease, the New Jersey Supreme Court declared a public policy against franchise agreements which could be nonrenewed without cause. *Shell Oil Co. v. Marinello*, 63 N.J. 402, 307 A.2d 598, 602 (1973), *cert. denied*, 415 U.S. 920 (1974). No other court has agreed, and it is not clear that even New Jersey would apply that rule to the more balanced, long-term agreement here.

it has not expired is fundamentally different from the right not to offer a new contract relationship after expiration of an old one.[9]

Because the common law duty of good faith, in the context of the sort of agreements here, would not protect the sorts of interests shielded by the Act, the effect of the Act cannot be regarded as an insignificant change or a mere codification of restraints imposed by common law in the absence of the Act.

II. THE HOLDING THAT THE ACT'S ALTERATION OF THE PARTIES' RIGHTS UNCONSTITUTIONALLY IMPAIRS THE OBLIGATION OF PRE-EXISTING CONTRACTS ACCORDS WITH PRECEDENT.

Article I, § 10 of the United States Constitution, the Contract Clause, provides that "[n]o State shall . . . pass any . . . Law impairing the Obligation of Contracts."[10] It is well established that the Contract Clause coexists with an extremely broad range of state power:

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[9] The duty of good faith is a duty to do nothing which will deprive the other party of the intended benefits of the agreement. It thus protects the promises *already* made in that agreement. *It does not require the making of new promises or the undertaking of new obligations,* unless there has been an express or implied promise to do so. *Cf. In re Vylene Enters., Inc.*, 105 B.R. 42 (Bankr. C.D. Cal. 1989), *vacated*, 122 B.R. 747 (C.D. Cal. 1990), *appeal dismissed*, 968 F.2d 887 (9th Cir. 1992); *Arnott v. American Oil Co.*, 609 F.2d 873, 881-84 (8th Cir. 1979), *cert. denied*, 446 U.S. 918 (1980) (analyzing termination without cause but relying in part on an implied undertaking created by contractual silence on renewal rights and prior custom of routine renewal which had induced dealer to accept transfer to this location). Thus, the duty of good faith, *standing alone,* does not limit or restrict a party's discretion whether to enter a new contract by imposing a duty to do so absent cause for nonrenewal. *E.g. General Aviation, Inc. v. Cessna Aircraft Co.*, 915 F.2d 1038, 1041-42 (6th Cir. 1990) (Michigan law) (distributorship); *William C. Cornitius, Inc. v. Wheeler*, 276 Or. 747, 556 P.2d 666, 670 (1976) (service station dealer).

[10] By its terms, the Contract Clause does not apply to *judicial* invalidations of prior contract rights in developing the common law. *Mariniello v. Shell Oil Co.*, 511 F.2d 853, 859-60 (3d Cir. 1975).

> "It is the settled law of this [C]ourt that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are vested in it for the promotion of the common weal, or are necessary for the general good of the public, though contracts previously entered into between individuals may thereby be affected. . . ." As Mr. Justice Holmes succinctly put the matter. . . . "One whose rights, such as they are, are subject to state restriction, cannot remove them from the power of the State by making a contract about them. The contract will carry with it the infirmity of the subject-matter."

Allied Structural Steel Co. v. Spannaus, 438 U.S. 234, 241-42 (1978) (citations omitted). But the statute here is not within the ambit of state power to modify pre-existing contracts.

As *Spannaus* holds, despite the remaining breadth of state power, the Contract Clause "is not a dead letter." *Id.* at 241. For it "to retain any meaning at all, . . . it must be understood to impose *some* limits upon the power of a State to abridge existing contractual relationships, even in the exercise of its otherwise legitimate police power." *Id.* at 242.

The courts below correctly applied the methodology laid down by this Court for assessing impairment of contract claims. Under that methodology, a statute which modifies pre-existing contractual rights is valid (a) if the impact on those rights is sufficiently minimal *or* (b) if the statute is justified by a sufficiently overriding legislative purpose. In the latter case, the contractual modification also must be both reasonable and appropriate to the public purpose which justifies the modification.

A. The Courts Below Properly Found a Severe Impairment.

The first step in the inquiry is to determine whether any impact on contractual rights is so minimal as to be beneath constitutional notice:

> The severity of the impairment measures the height of the hurdle the state legislation must clear. Minimal alteration of contractual obligations may end the inquiry at its first stage. Severe impairment, on the other hand, will push the inquiry to a careful examination of the nature and purpose of the state legislation.

Id. at 245.

The courts below found that the impairment here is not minimal, for it directly alters central elements of the contract. As the district court found, the Act "materially changes the rights to which the parties agreed and for which they gave consideration." 822 F. Supp. at 606, App. at 27. The Eighth Circuit generally approved the district court's analysis and, on this point, specifically concluded that "[w]e do not think it can be seriously contested that the retroactive feature of the [Act] substantially impaired the obligations previously owed to the plaintiffs in this case." 29 F.3d at 384, App. at 4.

Here, the legislature has attempted *to alter the terms of existing bargains* between McDonald's and its Iowa franchisees *and to force McDonald's to continue performing under the altered terms*, regardless of the impact on the original bargain. *It is this redistribution of benefits and burdens between the contracting parties which is the essence of impairment.* In contrast, where the state merely regulates prospectively and leaves parties free to contract (or not) in light of the regulation, no redistribution occurs and no Contract Clause issue arises.[11]

The Contract Clause protects reliance upon agreements to structure private affairs. As this Court explained in *Spannaus*:

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[11] For example, *Boatland, Inc. v. Brunswick Corp.*, 558 F.2d 818 (6th Cir. 1977), and *Westfield Centre Serv., Inc. v. Cities Serv. Oil Co.*, 86 N.J. 453, 432 A.2d 48 (1981), *aff'g in pertinent part*, 158 N.J. Super. 455, 386 A.2d 448 (Ch. Div. 1978), both involved contracts made or renewed *after* enactment of the challenged statutes, so no impairment issue was (or could have been) presented.

> The severity of an impairment of contractual obligations can be measured by the factors that reflect the high value the Framers placed on the protection of private contracts. Contracts enable individuals to order their personal and business affairs according to their particular needs and interests. Once arranged, those rights and obligations are binding under the law, and the parties are entitled to rely on them.

438 U.S. at 245.

The key to determining the severity of an impairment is the extent to which the parties relied, in fixing the terms of their bargain, on the benefits or burdens which the impairing statute would eliminate. For example, in *Spannaus*, this Court found a severe impairment where a state attempted to confer on employees with ten years' service, who were terminated in plant closings, vesting rights in their pensions, even though their employers' pension plans denied such vesting.[19] Moreover, the Court did not require (as the dissenters would have, 438 U.S. at 253-54) that the company have made some specific reduction of its contributions to reflect the possibility that employees might be prevented from completing the service necessary for vesting because the office in which they worked might be closed. Thus, *the reliance which was important was that which occurred in defining the terms initially, not that shown in subsequent performance*. In light of this reliance, the subsequent impairment was "severe." *Id.* at 246.[12]

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12 *United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977), also shows that the focus in determining the severity of an impairment is on the importance of the relevant contractual term in reaching the original bargain, not on its value at the time of impairment. There, the Port Authority operated toll bridges and tunnels and a subsidized commuter railroad system and had issued revenue bonds. Investors were wary of additional money-losing rail operations, so the two states enacted a statutory covenant that no bonds were to be issued for railroad purposes unless total rail deficits were reduced below a given level. Later, the states substantially increased bridge and tunnel tolls, with a view to using the increased revenues for railroad purposes, and repealed the covenant against such use. The repeal was found to unconstitutionally impair the bond contracts.

footnote continued on page 18

If the terms to be altered *were* important to the structuring of the original bargain, and if the parties are forced to proceed on a basis they never would have agreed to in the first instance, there is a severe injury to that reliance interest (even if the economic impact at the time the alteration is imposed may seem relatively modest).[13] *See United States Trust Co. v. New Jersey*, 431 U.S. 1 (1977).

On the facts here, it is beyond question that the contractual terms altered by the Act (absence of territorial rights, limited franchise term, and the requirement that the franchise be owned entirely by an individual entrepreneur who would devote full time to the franchise) were fundamental to the bargain between Nelson and McDonald's when that bargain was made. The significance of those terms to both McDonald's and its franchisees is undisputed in the record and they are clearly, prominently, and emphatically stated in the agreement and in the accompanying materials provided to Nelson in connection with his purchase of the franchises.

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footnote continued from page 17

The dissent argued that the repeal should have been sustained because the state courts had found the repeal had had only a minor impact on the value of the bonds. *Id.* at 41-44. But the Court found that, absent an attempt to substitute other rights for those taken away, the appropriate focus was instead on the *originally* intended significance of the rights impaired: "As a security provision, the covenant was not superfluous; it limited the Port Authority's deficits and thus protected the general reserve fund from depletion. Nor was the covenant merely modified or replaced by an arguably comparable security provision. Its outright repeal totally eliminated an important security provision and thus impaired the obligation of the States' contract." *Id.* at 19.

[13] By the same token, even if the impact at the time of impairment is relatively great, the impairment is still "minimal" if the magnitude of the impairment stems solely from developments never anticipated at the time of contracting, so that the parties would not *then* have attached great importance to the term later altered by statute. For example, the price adjustment terms in *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400 (1983), were very significant in the environment of deregulation which existed at the time of statutory modification. But no one had anticipated that sort of environment at the time of contracting, so the enormous benefit to the seller was a windfall, rather than an element of the value relied upon in structuring the contractual balance. *Id.* at 411-16.

Almost every case to consider a challenge to statutory changes to similar contractual terms has found a "severe" impairment.[14] *Petitioners entirely ignore this body of law, beyond citing the few outdated or distinguishable cases that upheld such statutes.*

Petitioners rely heavily on *General Offshore Corp. v. Farrelly*, 743 F. Supp. 1177 (D.V.I. 1990). There, a Virgin Islands statute

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[14] *See, e.g., Northshore Cycles, Inc. v. Yamaha Motor Corp.*, 919 F.2d 1041, 1043 (5th Cir. 1990); *Morgan v. Kemper Ins. Co.*, 754 F.2d 145, 147-48 (4th Cir. 1985); *Garris v. Hanover Ins. Co.*, 630 F.2d 1001, 1005-07 (4th Cir. 1980); *Fornaris v. Ridge Tool Co.*, 423 F.2d 563 (1st Cir.), *rev'd on other grounds*, 400 U.S. 41 (1970) (resolution of constitutional question should have been deferred to see if Puerto Rico court might construe statute in a way avoiding that question); *Mankato Implement Inc. v. J.I. Case Co.*, [1990-1992 Transfer Binder] Bus. Franchise Guide (CCH) ¶ 9947 (D. Minn. 1991); *Larco Distrib., Inc. v. Latrobe Brewing Co.*, 1990 WL 168702 (D. Kan. 1990); *Rochester v. Royal Appl. Mfg. Co.*, 569 F. Supp. 736 (W.D. Wis. 1983); *Chico's Pizza Franchises, Inc. v. Sisemore*, 544 F. Supp. 248, 249-50 (E.D. Wash. 1981), *aff'd*, 685 F.2d 440 (9th Cir. 1982); *Superior Motors, Inc. v. Winnebago Indus., Inc.*, 359 F. Supp. 773, 779 (D.S.C. 1973); *Shell v. Metropolitan Life Ins. Co.*, 181 W. Va. 16, 380 S.E.2d 183, 188-91 (1989); *Heublein, Inc. v. Department of Alcoholic Bev. Control*, 237 Va. 192, 376 S.E.2d 77, 79 (1989); *Birkenwald Distrib. Co. v. Heublein, Inc.*, 55 Wash. App. 1, 776 P.2d 721, 724-25 (1989); *Jacobsen v. Anheuser-Busch, Inc.*, 392 N.W.2d 868, 872-74 (Minn. 1986), *cert. denied*, 479 U.S. 1060 (1987); *Fireside Chrysler-Plymouth Mazda, Inc. v. Chrysler Corp.*, 129 Ill. App. 3d 575, 472 N.E.2d 861, 866 (1984); *G-H Ins. Agency, Inc. v. Continental Ins. Co.*, 278 S.C. 241, 294 S.E.2d 336 (1982); *Martino v. McDonald's Corp.*, 101 Wis. 2d 612, 304 N.W.2d 780 (1981); *Wipperfurth v. U-Haul Co.*, 101 Wis. 2d 586, 304 N.W.2d 767, 773 (1981); *Park Benziger & Co. v. Southern Wine & Spirits, Inc.*, 391 So. 2d 681 (Fla. 1980); *Smith Ins. Inc. v. Grievance Comm.*, 120 N.H. 856, 424 A.2d 816, 820 (1980); *Ward v. Chevron U.S.A. Inc.*, 123 Ariz. 208, 598 P.2d 1027 (1979); *Globe Liquor Co. v. Four Roses Distillers Co.*, 281 A.2d 19 (Del.), *cert. denied*, 404 U.S. 873 (1971).

Schieffelin & Co. v. Department of Liquor Control, 194 Conn. 165, 479 A.2d 1191 (1984), assumed "severe impairment" but did not decide that issue, because it found that the special regulatory needs of the liquor industry justified the statute. *Willys Motors, Inc. v. Northwest Kaiser-Willys, Inc.*, 142 F. Supp. 469 (D. Minn. 1956), and *Anderson's Vehicle Sales, Inc. v. OMC-Lincoln*, 287 N.W.2d 247 (Mich. Ct. App. 1979), upheld the statutes at issue on the basis of an adequate public purpose, without addressing whether the impairment was "severe." The sole contrary case, *N.A. Burkitt, Inc. v. J.I. Case Co.*, 597 F. Supp. 1086, 1091-92 (D. Me. 1984), relied on a history of pervasive regulation with no counterpart here. These were the only such cases to sustain the challenged statutes.

forbade discharge of any employee except for specified causes, though the court found that those included "almost every conceivable reason for which an employer might reasonably wish to discharge an employee." *Id.* at 1198. Some months after the statute was enacted, General Offshore sought to fire an employee who was hired before the statute was enacted. *Id.* at 1181. When the employee filed an administrative complaint alleging wrongful discharge, General Offshore sought to enjoin administrative proceedings on the ground, *inter alia*, that they impaired the implied contract of employment at will. The court held that the statute was not facially invalid.

General Offshore did not involve an impairment of the sort at issue here for at least two related reasons. First, the essence of the employer's contention was that the employment was at will. Thus, a new contract could be considered made every day. *See, e.g., Northshore Cycles, Inc. v. Yamaha Motor Corp.*, 919 F.2d 1041, 1043 (5th Cir. 1990). When General Offshore did not fire an employee immediately after the statute took effect, a new contract, fully consistent with the statute, was made.[15] Second, because the employment was at will, all of its terms other than job security (wages, hours, benefits) were likewise subject to alteration. Thus, employers were free to adjust those terms in whatever ways were necessary to restore the contractual balance in light of the change in job security. Here, in contrast, McDonald's is bound by long-term contracts with Nelson which it must continue to observe despite statutory modification of key terms.

Petitioners also attempt to dispute existence of a severe impairment by arguing that McDonald's *ought not to have had any firm contractual expectations* because it should have anticipated the "possibility" not only of future regulation but of retroactive regulation like that now imposed. (Pet. 19-21.) Given the pervasive nature of modern economic regulation, petitioners appear to assert that no one's contract rights are safe from redistribution while the legislature sits. The Contract Clause says otherwise.

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[15] Similar reasoning applies to *N.A. Burkitt, Inc. v. J.I. Case Co.*, 597 F. Supp. 1086 (D. Me. 1984). Prior to the challenged 1981 statute, the dealership there was terminable on 60 days' notice. *Id.* at 1087. No termination was attempted until 1983, long after a new contract, governed by the new statute, had been formed.

The required anticipation, petitioners urge, should have resulted from Iowa's regulation of dealership relationships in selected other industries (motor vehicles, agricultural equipment, and motor fuel) and from regulation by other states of franchise relationships, in various industries (other than restaurants) or generally. They cannot cite any prior regulation by Iowa of restaurant marketing systems.

None of the regulatory schemes relied upon by petitioners below precluded the formation by McDonald's of expectations that it could rely upon the structuring of relationships created by its franchise agreements. Where franchise or dealership regulations of the sort involved here have been imposed, the legislation has typically provided that it applies only to newly formed relationships or has been so interpreted.[16] Where the legislation has not been so limited, its retroactive application to existing relationships has usually been held unconstitutional. (See cases collected at note 14, *supra*.) Thus, McDonald's had no reason to anticipate that such legislation, if enacted, would be applied to alter existing contracts, and it had every right to rely on the provisions of those contracts.[17]

The origin of this entire line of analysis is *Veix v. Sixth Ward Building & Loan Association*, 310 U.S. 32 (1939), which held when a party "purchased into an enterprise already regulated in the particular

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16 *See, e.g.*, Virginia Retail Franchising Act § 13.1-574 ("The provisions of this chapter shall apply to grants and offers to grant franchises on and after July 1, 1972"); Virginia Petroleum Products Franchise Act § 59.1-21.17 ("The provisions of this chapter shall be applicable to franchise agreements entered into on or after July 1, 1973"); Indiana Deceptive Franchise Practice Act of 1987 § 23-2-2.7-6 ("The provisions of this chapter apply only to agreements entered into or renewed, or act or practice occurring after July 1, 1976"); *McAleer Buick-Pontiac Co. v. General Motors Corp.*, 95 Ill. App. 3d 111, 419 N.E.2d 608 (1981) (retroactive application of "good cause" renewal provision would impair the obligation of contract); *McDonald's Corp. v. Markim, Inc.*, 209 Neb. 49, 306 N.W.2d 158 (1981) (declining to apply Nebraska Franchise Act retroactively).

17 McDonald's also did not contract in the context of a regulated environment. The regulations now cited applied to other lines of business and/or in other states. Nothing in the case law forces a business enterprise which contracts in an unregulated environment to look to other industries or other states to ascertain whether it may form secure contractual expectations.

to which he now objects, he purchased subject to further legislation upon the same topic."[18] *Id.* at 38. *Energy Reserves Group, Inc. v. Kansas Power & Light Co.*, 459 U.S. 400, 413-16 (1983), extended this notion to a business already *pervasively* regulated *by the very state which now proposes to adjust the contractual terms*, albeit not "in the particular" to which the plaintiff now objects.

In any event, *no* decision of this Court has *ever* upheld legislation which impairs contractual rights on the basis that allegedly similar regulations had previously been imposed by other states or on other businesses. This Court has never even *suggested* that legislation could be upheld on that basis. Indeed, no party to this action has ever cited a single case, *in any court*, which has ever sustained a statute on that ground.[19]

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[18] The principal cases relied upon here are ones where the state accused of impairment had already regulated the contract "in the particular" which was the subject of the later statute or had expressly reserved the right to do so. *Troy Ltd. v. Renna*, 727 F.2d 287, 298 (3d Cir. 1984) (new statute expanded and extended for some tenants, protected rights to remain in their apartments previously established under an earlier, unchallenged statute); *General Offshore Corp. v. Farrelly*, 743 F. Supp. 1177 (D.V.I. 1990) (state had previously prohibited employee discharges contrary to public policy, so requirement of good cause for discharge was minimal impairment); *N.A. Burkitt, Inc. v. J.I. Case Co.*, 597 F. Supp. 1086, 1092 (D. Me. 1984) (change from requiring "due cause" for termination to requiring "good cause" and mandating a six-month "cure" period only minimal impairment); *Schieffelin & Co. v. Department of Liquor Control*, 194 Conn. 165, 479 A.2d 1191 (1984) (state already regulated termination of wine dealerships, though prior regulation did not restrict termination until dealership had been in existence for 24 months, as opposed to six months under the new statute).

[19] Petitioners' approach would also have led to an opposite result in *Spannaus*, as pension plans had long been regulated extensively by the tax laws and a longstanding political effort to regulate vesting — the subject of the invalid statute — was just reaching fruition in the 1974 enactment of ERISA when the Minnesota statute was passed. Moreover, petitioners' test would have denied the central result intended to be accomplished by the Contract Clause: prohibition of retroactive debtor relief legislation. Such legislation had long been part of the political dialog and had actually been adopted in a number of jurisdictions. Thus, if petitioners are correct, creditors should have continued to expect such legislation even after adoption of the Contract Clause.

B. The Courts Below Properly Found That The Act Does Not Serve a Public Purpose By Addressing Any Broad Social Problem. It Is Special Interest Legislation Which Simply Redistributes Private Contractual Benefits and Burdens.

If a more than minimal impairment is found:

> the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem. . . . The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.

Energy Reserves Group, Inc. v. Kansas Power & Light Co., 459 U.S. 400, 411-12 (1983) (citations omitted).

At this step, the statute must fail unless there is a *showing*, in the record or through judicially noticeable facts, that the

> disruption of contractual expectations was necessary to meet an important general social problem. The presumption favoring "legislative judgment as to the necessity and reasonableness of a particular measure," simply cannot stand in [the face of a severe impairment].

Spannaus, 438 U.S. at 247 (citation omitted).

Here, the defenders of the statute cannot make the required showing because, as shown below, the statute addresses *no* "important general social problem." Rather, it serves only to benefit a special interest — franchisees whose contractual rights and obligations are

altered. Thus, the statute cannot stand.[20] The district court, whose analysis the Eighth Circuit generally approved, specifically found an absence of any public purpose. 822 F. Supp. at 608-09.

Because the Franchise Agreement Act severely impairs the pre-existing contracts between McDonald's and Nelson, it cannot stand unless the impairments are justified by a legitimate public purpose and are both reasonable in light of that purpose and granted on conditions appropriate to that purpose. This Court has emphasized that

> laws intended to regulate existing contractual relationships must serve a legitimate public purpose. A State could not "adopt as its policy the repudiation of debts or the destruction of contracts or the denial of means to enforce them."

United States Trust, 431 U.S. at 22 (citation omitted).

A "legitimate public purpose" which can justify contract impairment requires more than an objective which could support purely prospective legislation. Otherwise the Contract Clause would impose no independent limit at all.[21] *Spannaus*, 438 U.S. at 242. Thus,

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[20] If there were a legitimate public purpose, analysis would turn to a third issue: "whether the adjustment of 'the rights and responsibilities of contracting parties [is based] upon reasonable conditions and [is] of a character appropriate to the public purpose justifying [the legislation's] adoption.'" *Energy Reserves*, 459 U.S. at 412-13 (citation omitted).

If the state is not a self-interested contracting party, *at this last stage of the analysis only*, "courts properly defer to legislative judgment as to the necessity and reasonableness of a particular measure." 459 U.S. at 413 (citation omitted). The courts below did not need to reach this step of the analysis because there was no public purpose shown.

[21] Once a legitimate purpose has been identified, a court applying either the Contract Clause, the Equal Protection Clause, or the substantive aspects of the Due Process Clause gives similar deference to legislative judgments about the necessity of the challenged legislation. See note 20, *supra*. Thus, the *only* possible difference concerns the range of permissible purposes.

> the State, in justification, must have a significant and legitimate public purpose behind the regulation, such as the remedying of a broad and general social or economic problem. . . . The requirement of a legitimate public purpose guarantees that the State is exercising its police power, rather than providing a benefit to special interests.

Energy Reserves, 459 U.S. at 411-12 (citations omitted).

Determination of what constitutes a "legitimate public purpose" sufficient to impair pre-existing private contracts must be made in light of the purpose of the Contract Clause, "to encourage trade and credit by promoting confidence in the stability of contractual obligations." *United States Trust*, 431 U.S. at 15. That purpose would be defeated if substantial contract impairments were lightly permitted.

In fact, such impairments have been sustained only when the state has shown a weighty purpose *going beyond readjustment of the rights of the contracting parties*, that is, a public purpose. *E.g.*, *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470 (1987) (protection of public against environmental hazards of mine subsidence which would result if mining company exercised contractual right, acquired from surface owner, to remove subjacent support); *Exxon Corp. v. Eagerton*, 462 U.S. 176 (1983) (protection of ultimate consumers from price increases which would result if natural gas producers exercised contractual right to pass on severance tax increase to wholesalers); *Energy Reserves*, 459 U.S. 400, 416-17 (protection of utility customers from price increase which would result if gas producer were permitted to exercise contractual right to increase price to utility when federal government deregulated gas prices).

As the district court concluded,

> the articulated overall purpose of the Act is specifically to adjust the balance of power between contracting parties. Although defendants and intervenors urge that franchising is a growing practice and a growing part of the economy in Iowa and throughout the nation, that fact by

> itself does not supply a broad societal interest justifying the substantial impairment of *existing* contracts.

822 F. Supp. at 608-09, App. at 33.

The precise function of the Contract Clause is to preclude impairment for the very purpose relied upon here: redistributing benefits and burdens between the contracting parties ***because the legislature believes that result fairer or more just, as between those parties.***[22] *In contrast, as shown by the cases discussed at 25, supra, redistributive impacts on contracting parties are allowed if those impacts are only incidental to regulations whose primary purpose is protection of those who are not parties to the contracts impaired.*

Petitioners offer an alternate test: legislation which impairs contracts, they claim, must benefit some minimum number of people. (Pet. 12-13.) They derive this test by selectively pointing to cases where invalid legislation ostensibly benefited only a small group or valid legislation benefited a large group. But this proposal is not based on the language or purposes of the Contract Clause or supported by analysis or precedent. Indeed, the test proposed by appellants would prevent the Contract Clause from accomplishing its original purpose: prohibiting debtor-relief legislation. *See Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 503 (1987). Debtors are more numerous than franchisees. If sheer numbers were enough to permit impairment, debtor relief legislation would not be limited by the Contract Clause, independently of due process and equal protection. Moreover, the contract impairment in *United States Trust* was intended to benefit New York commuters, another very numerous class, but was nonetheless struck down.

In short, petitioners' argument in no way establishes that the courts below erred in concluding that the challenged provisions of the Act to existing contracts cannot be justified by any legitimate *public* purpose, as opposed to the purpose of protecting the special interests

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[22] The statute upheld in *Troy Ltd. v. Renna*, 727 F.2d 287 (3d Cir. 1984), sought to protect not only the elderly tenants who were its direct beneficiaries but also the communities which would otherwise have been deprived of their presence. *Id.* at 290 n.2. It is, thus, distinguishable.

of franchisees *who are parties to the contracts which are to be impaired.* Absent any legitimate purpose for retroactive application, there is no occasion to inquire into the reasonableness or the means used to promote that nonexistent purpose.

CONCLUSION

This case presents no novel or unsettled issue, there is no significant disparity with other relevant decisions, and the courts below correctly applied the principles laid down by this Court. Accordingly, the petition for certiorari should be denied.

Respectfully submitted,

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